Supreme Court, U.S.
FILED
FEB 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1122

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

RUTH V. SMITH, Administratrix of the Estate of HARRY F. SMITH, Deceased
and
RITA LADZENSKY, Administratrix of the Estate of GERALD LADZENSKY, Deceased
and
CHARLES ALEXANDER SCOTT,
Appellants

v.

CITY OF PHILADELPHIA
and
PHILADELPHIA GAS WORKS
and
PHILADELPHIA FACILITIES MANAGEMENT CORPORATION,
Appellees

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

MOTION OF APPELLEES PHILADELPHIA GAS WORKS AND PHILADELPHIA FACILITIES MANAGEMENT CORPORATION TO DISMISS OR AFFIRM

RUTH RUDBARG WESSEL
OBERMAYER, REBMANN, MAXWELL & HIPPEL
14th Floor, Packard Building
15th and Chestnut Streets
Philadelphia, PA 19102 (215) 665-3232
Counsel of Record for Appellees Philadelphia Gas Works and Philadelphia Facilities Management Corporation

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

TABLE OF CONTENTS

Page

Table of Authorities ii

Motion to Dismiss or Affirm 1

Statement of Facts 1

Argument 2

Conclusion 11

Appendix:

Table of State Statutory Provisions Limiting Damage Recoveries Against Governmental Entities A-1

TABLE OF AUTHORITIES

Cases:	Page
Cauley v. City of Jacksonville, 403 So. 2d 379 (Fla. 1981)	3, 9
Consoli v. Municipio de San Juan, 408 F. Supp. 384 (D.P.R. 1975)	6, 9
Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L.Ed. 2d 491 (1970)	2, 6
Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 90 S. Ct. 2620, 57 L.Ed. 2d 491 (1978)	3, 6, 7
Estate of Cargill v. City of Rochester, 119 N.H. 611, 406 A.2d 704, *appeal dismissed*, 445 U.S. 921 (1980)	3, 9
Hallett v. Town of Wrentham, 499 N.E. 2d 1189 (Mass. 1986)	3, 5, 9
Home Indemnity v. Anders, 459 So. 2d 836 (Ala. 1984)	3, 6, 9
Lee v. The Colorado Department of Health, 718 P.2d 22 (Colo. 1986)	3, 5, 9
Leliefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983)	3, 5, 9
Jetton v. Jacksonville Electric Authority, 399 So. 2d 396 (Fla. 1981)	5
McGowan v. Maryland, 366 U.S. 420, 81 S. Ct. 1101, 6 L.Ed. 2d 393 (1961)	3, 5
McLaughlin v. Florida, 379 U.S. 184 85 S. Ct. 283 (1964)	4
Opinion of the Justices, 493 A.2d 1182 (N.H. 1985)	6
Parham v. Hughes, 441 U.S. 347, 99 S. Ct. 1742 (1979)	3, 7, 8

TABLE OF AUTHORITIES—*(Continued)*

Cases: Page

Pfost v. Montana, 713 P.2d 495 (Mont. 1985) 9

Sambs v. City of Brookfield, 197 Wis. 2d 356, 293 N.E. 2d 504, *cert. denied*, 449 U.S. 1035 (1980). 3, 5, 9

Seifert v. Standard Paving Co., 64 Ill, 2d 109, 355 N.E. 2d 357 (1976). 3

State v. Kallio, 92 Nev. 665, 557 P.2d 705 (1976) 3, 6, 9

Vance v. Bradley, 440 U.S. 93, 99 S. Ct. 939 (1979). 3, 7, 8

Constitution and statutes:

Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S. §8541 *et seq.* 53 P.S. §5311.402 . . . . . 1, 2, 4

United States Constitution, Fourteenth Amendment 2, 6, 8, 10

MOTION TO DISMISS OR AFFIRM

Appellees Philadelphia Gas Works and Philadelphia Facilities Management Corporation move this Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of Pennsylvania on the grounds that the question on which the cause depends is so insubstantial as not to need further argument, there is an absence of conflict of opinions regarding the question presented and the decision below is so obviously correct as to warrant no further review.

I. STATEMENT OF FACTS

On May 11, 1979, a gas explosion occurred in the Bridesburg section of Philadelphia. The explosion generated forty-six lawsuits seeking damages for personal injury and property damage from various Defendants, including Appellees City of Philadelphia and the Philadelphia Gas Works. In all forty-six cases, the City of Philadelphia and the Philadelphia Gas Works asserted the defenses and immunities available to them under the provisions of a Pennsylvania statute, the Political Subdivision Tort Claims Act.[1] The Political Subdivision Tort Claims Act establishes tort immunity for political subdivisions, but partially abrogates immunity by creating eight categories of cases in which government entities may be sued for damages up to a $500,000 per occurrence cap. Appellee Philadelphia Facilities Management Corporation[2] was named Defendant in seven cases and also asserted the defenses and immunities available to it under the Act.

---

1. Act of November 26, 1978, P.L. 1399, No. 330, 5101 *et seq.*, effective January 25, 1979 formerly 53 P.S. §5311.101 *et seq.*, repealed by Act of October 5, 1980 P.L. 693. Similar provisions are now found in 42 Pa. C.S. §8541 *et seq.*

2. Philadelphia Facilities Management Corporation is a nonprofit corporation created by virtue of City ordinance to manage the operations of the Philadelphia Gas Works.

Appellants are Plaintiffs in three of the personal injury cases who jointly instituted this collateral declaratory judgment action to determine the validity of the damage cap. Appellants filed a Motion for Summary Judgment in the trial court requesting a declaration that §5311.402 of the Tort Claims Act, which provides that damages arising from the same occurrence may not be recovered against a political subdivision in an amount in excess of $500,000 in the aggregate, is violative of the Pennsylvania Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The trial court granted the Motion for Summary Judgment and declared the damage cap unconstitutional on the state and federal grounds. The Supreme Court of Pennsylvania reversed on all theories holding, *inter alia*, that the statute fully complies with the requirements of the Equal Protection Clause. Appellants now ask this Court to review the decision of the Supreme Court of Pennsylvania. For the reasons which follow, Appellee submits that this Court should either dismiss this appeal or affirm the decision of the Supreme Court of Pennsylvania.

II. ARGUMENT

A. THE QUESTION PRESENTED IS SO INSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

1. It Is Manifest That The Damage Cap Does Not Violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

This Court has repeatedly and consistently held that the rational relationship test is the proper standard of review for equal protection challenges to statutes such as the Political Subdivision Tort Claims Act which impact economic areas. *Dandridge v. Williams*, 397 U.S. 471, 90

S.Ct. 1153, 25 L.Ed.2d 491 (1970) (upholding state law placing an upper limit on the number of children for which any family can receive subsistance payments); *Duke Power Co. v. Carolina Environmental Study Group,* 438 U.S. 59, 90 S.Ct. 2620, 57 L.Ed.2d 595 (1978) (upholding statute imposing monetary limit on liability for nuclear accidents); *Vance v. Bradley,* 440 U.S. 93, 99 S. Ct. 939 (1979) (upholding statute imposing a mandatory retirement age of 60 on some federal employees and not on others); *Parham v. Hughes,* 441 U.S. 347, 99 S. Ct. 1742 (1979) (upholding state law precluding a father who has not legitimated a child from suing for wrongful death of child). Although this Court has not specifically reviewed an equal protection challenge to a state statute limiting tort damages recoverable against governmental entities, the appellate courts of numerous states have applied the principles enunciated by this Court and used the rational relationship test to consider equal protection challenges to such statutes. *See, e.g., Cauley v. City of Jacksonville, Florida,* 403 So.2d 379 (Fla. 1981); *Leliefeld v. Johnson,* 104 Idaho 357, 659 P.2d 111 (1983); *Seifert v. Standard Paving Co.,* 64 Ill.2d 109, 355 N.E.2d 537 (1976); *State v. Kallio,* 92 Nev. 665, 557 P.2d 705 (1976); *Estate of Cargil v. City of Rochester, N.H.,* 406 A.2d 704 (N.H. 1979), *appeal dismissed* 445 U.S. 921, 100 S.Ct. 1304, 53 L.Ed.2d 754 (1980); *Sambs v. City of Brookfield,* 97 Wis.2d 356, 293 N.W.2d 504 (1980), *cert. denied* 449 U.S. 1035, 101 S.Ct. 61, 66 L.Ed.2d 497 (1980); *Lee v. The Colorado Department of Health,* 718 P.2d 221 (Colo. 1986); *Home Indemnity v. Anders,* 459 So. 2d 836 (Ala. 1984); *Hallett v. Town of Wrentham,* 499 N.E. 2d 1189 (Mass. 1986).

Under the rational relationship test, a law which subjects different classes of individuals to different treatment will be upheld if there is any possible rational basis for the challenged classification. The burden is on the party challenging the validity of the classification to prove that it is arbitrary. *McGowan v. Maryland,* 366

U.S. 420, 425-426 (1961). The legislature is presumed to have acted within its constitutional power and its judgment "is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious." *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964).

Application of the rational relationship test to the damage cap provision in the Political Subdivision Tort Claims Act results in the clear conclusion that the provision passes constitutional muster. The classifications resulting from the damage cap are rationally related to legitimate government objectives and are rationally related to the achievement of these objectives. Although the government may have an interest in allowing victims of government tortfeasors to recover their losses, the government has compelling interests in fiscal stability and solvency, the preservation of public funds for public services and the ability to establish rational fiscal planning and a balanced operating budget. The only way that these goals can be accomplished in this age of enormous jury awards and multiplicity of claims is by placing a limitation on damages. It cannot seriously be questioned that a limit on governmental damage payments rationally relates to the legitimate government interest in preserving sufficient funds for essential public services without imposing an insupportable burden upon taxpayers.

The rational relationship between damage caps and legitimate government objectives has been relied upon by several state appellate courts to uphold limits on governmental liability:

> We have no hesitation in concluding that this statutory classification is reasonably related to the governmental objective of providing fiscal certainty in carrying out the manifold responsibilities of government. By limiting the liability of a public entity to a

> fixed amount, the Governmental Immunity Act protects the public entity against the risk that unforeseen and unlimited tort judgments will deplete the public coffers and result in the termination or substantial curtailment of important governmental functions. The limitations on governmental liability in section 24-10-114(1) and 24-10-118(1)(b), therefore, satisfy equal protection of the laws. *Lee v. The Colorado Department of Health*, 718 P.2d at 227, 228.
>
> It is the Legislature's function to evaluate the risks, the extent of exposure to liability, the need to compensate victims for injury, the availability of the cost of insurance, and the financial condition of the governmental units. It is the legislature's function to structure statutory provisions which will protect the public interest in reimbursing the victims and maintaining government services and which will be fair and reasonable to the victim and at the same time will be realistic regarding the financial burden to be placed upon the taxpayers. Giving due deference to the Legislature, this Court will not set aside a statutory classification 'if any state of facts reasonably may be conceived to justify it.' *McGowan v. Maryland*, 366 U.S. 420, 426 (1961); *Sambs v. City of Brookfield*, 97 Wis.2d 356, 293 N.W.2d 504, 511 (1980).

See also, Jetton v. Jacksonville Electric Authority, 399 So.2d 396, 399 (Fla. App. 1981) ($100,000 aggregate damage cap "permitted government units to order their fiscal planning" and rational relationship found between recovery limit and object of the legislation); *Hallett v. Town of Wrentham*, 499 N.E. 2d 1189, 1191 (Mass. 1986) ("Protecting public funds from unlimited liability is a legitimate legislative purpose, and the $100,000 limitation on government liability is reasonably calculated to further that purpose.") *Leliefeld v. Johnson, supra,*

($300,000 aggregate limitation upheld); *Opinion of the Justices,* 493 A.2d 1182 (N.H. 1985) ($200,000 aggregate limit upheld); *State v. Kallio, supra,* ($25,000 limitation upheld); *Consoli v. Municipio de San Juan,* 408 F.Supp. 384 (D.P.R. 1975) ($15,000/$30,000 limit upheld); *Home Indemnity v. Anders,* 459 So. 2d 836 (Ala. 1984) ($100,000/$300,000 limit upheld).

Appellants' entire argument is based on the erroneous contention that the damage cap violates the Equal Protection Clause because the cap may operate to create distinctions between various claimants which are not drawn on the basis of their individual injuries or losses.[3] In fact, there are innumerable constitutionally valid statutes which create categories and distinctions without regard to the individual circumstances of those affected by the law. Contrary to Appellants' contentions, the Equal Protection Clause does not require that a statute address the varying situations of the victims. In fact, there is an abundance of authority which directly refutes the position taken by Appellants. In *Dandridge v. Williams,* 297 U.S. 471, 90 S.Ct. 1153, 1161 (1970), this Court upheld against an equal protection challenge a Maryland Department of Public Welfare regulation placing an absolute limit of $250 per month on the amount of welfare grants a family may receive regardless of the size of the family or its actual need, holding that the regulation was rationally related to the State's interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely

---

3. Appellants Jurisdictional Statement suggests that the damage cap does not meet the Due Process requirements of the Fifth Amendment as set forth in *Duke Power Co. v. Carolina Environmental Study, supra.* Appellants' suggestion is without substance or merit. Further, the issue may not be considered by this Court as it was never raised or argued below.

> because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369. "The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific." *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70, 33 S.Ct. 441, 443, 57 L.Ed. 730. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 366 U.S. 420, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393.

See also, Duke Power Co. v. Carolina Environmental Study, supra; Vance v. Bradley, supra; Parham v. Hughes, supra.

Although the aggregate nature of the damage limitation can create distinctions between victims of governmental tortfeasors because the amount of recovery may be affected by the number of co-victims of the same occurrence and the extent of their injuries, there is a rational relationship between the aggregate nature of the cap and the purpose of the statute. The aggregate cap obviously facilitates budgeting, risk management and fiscal stability. In fact, in light of the clear relationship between the cap and important governmental objectives, the contention that a damage cap is unconstitutional because it contains an aggregate liability ceiling "is but a thinly disguised version of the contention" that the amount of the cap "is inadequate." *Duke*, 438 U.S. at 91, 98 S.Ct. at 2640. Any argument that the cap should be struck down because the amount is inadequate should be rejected by the Court as an intrusion into legislative prerogatives.

The complete lack of supporting authority for Appellants' argument that the damage cap violates the Equal Protection Clause demonstrates that this appeal does not present a substantial question for review. Appellants cannot dispute that the legislative classifications resulting from the damage cap are justified by the compelling interest of the government to engage in rational fiscal planning and administration, and to preserve sufficient public funds to guarantee government services for the common good.

It is well established that a statute will not be overturned under the rational relationship test "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Vance v. Bradley*, 440 U.S. at 97, 99 S.Ct. at 943. Appellants have not and cannot make a credible argument that the damage cap is unrelated to a legitimate governmental goal or is irrational. The purposes of the cap, the preservation of sufficient funds for essential public services, rational fiscal planning, and avoidance of an undue burden on the taxpayers, are, indisputedly, important governmental objectives. Despite the Appellants' pleas for judicial legislation, this Court "is not free under the aegis of the Equal Protection Clause to substitute its judgment for the will of the people of a state as expressed in the laws passed by their popularly elected legislatures." *Parham v. Hughes*, 441 U.S. at 351, 99 S.Ct. at 1742. Therefore, this Court should dismiss this appeal or, in the alternative, affirm the judgment of the Supreme Court of Pennsylvania.

2. There Is An Absence of Conflict of Opinions Regarding The Question Presented.

Thirty four states and the Commonwealth of Puerto Rico presently have statutory damage caps in place

which are similar to the provision at issue in this appeal. (See Appendix.) In addition to Pennsylvania, equal protection challenges specific to damage caps on tort recoveries against governmental entities have been mounted in Alabama[4], Colorado[5], Florida[6], Idaho[7], Massachusetts[8], Nevada[9], New Hampshire[10], Wisconsin[11] and Puerto Rico[12]. All of the damage caps have been upheld as meeting the requirements of the Equal Protection Clause. The Montana damage cap, Montana Code Annotated, §2-9-107 (1985), is the only cap which has been invalidated on any ground. The Montana Cap was struck down strictly on state law grounds. *Pfost v. Montana*, 713 P.2d 495 (Mont. 1985). In striking down the law, the *Pfost* Court specifically noted that state constitutional provisions "may be more demanding" than equivalent federal constitutional provisions and, thus, "states may interpret their own constitutions to afford greater protections" than their federal counterparts. *Pfost v. Montana*, 713 P.2d at 500.

All of the state appellate decisions extant uniformly hold or are consistent with the proposition that statutory

---

4. *Home Indemnity Co. v. Anders*, 459 So.2d 836 (Ala. 1984).

5. *Lee v. The Colorado Department of Health*, 718 P.2d 22 (Colo. 1986).

6. *Cauley v. City of Jacksonville*, 403 So.2d 379 (Fla. 1981); *Jetton v. Jacksonville Electric Authority*, 399 So.2d 396 (Fla. 1981).

7. *Leliefeld v. Johnson*, 104 Idaho 357, 659 P.2d 111 (1983).

8. *Hallett v. Wrentham*, 499 N.E. 2d 1189 (Mass. 1986).

9. *State v. Kallio*, 92 Nev. 665, 557 P.2d 705 (1976).

10. *Estate of Cargil v. City of Rochester*, 119 N.H. 611, 406 A.2d 704, appeal dismissed, 445 U.S. 921 (1980).

11. *Sambs v. City of Brookfield*, 197 Wis. 2d 356, 293 N.E.2d 504, cert. denied. 449 U.S. 1035 (1980).

12. *Consoli v. Municipio de San Juan*, 408 F.Supp. 384 (D.P.R. 1975).

damage caps on tort recoveries from governmental entities meet the requirements of the Federal Equal Protection Clause. The total absence of conflicting opinions concerning this issue clearly demonstrates that further review and argument is not warranted.

3. The Decision Below Is So Obviously Correct As To Warrant No Further Review.

The decision of the Supreme Court of Pennsylvania is consistently, uncategorically and overwhelmingly supported by the decisions of this Court and the highest appellate courts of the states that have considered similar issues. Further, Appellants have not raised a single legally supportable argument to substantiate this appeal. In light of Appellants' failure to cast any doubt on the validity of the decision below and the clear validity of the damage cap provision of the Political Subdivision Tort Claims Act, this Court should dismiss this appeal or affirm the decision of the Supreme Court of Pennsylvania.

CONCLUSION

For al' of the reasons set forth above, Appellees Philadelphia Gas Works and Philadelphia Facilities Management Corporation respectfully request that this Court dismiss this appeal or, in the alternative, affirm the decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

Ruth Rudbarg Wessel
Obermayer, Rebmann, Maxwell
& Hippel
14th Floor, Packard Building
Philadelphia, PA 19102
(215) 665-3232

Counsel of Record for Appellees
Philadelphia Gas Works and
Philadelphia Facilities Management
Corporation

APPENDIX

Table of State Statutory Provisions Limiting Damage Recoveries Against Governmental Entities

1. Code of Alabama 1975, §11-93-2 (1985) — $100,000 individual cap, $300,000 aggregate cap
2. Alaska Statutes 1962, §09-17-010 (Michie, 1986) — $500,000 individual cap
3. Colorado Revised Statutes 1973, Volume 101, §24-10-114 (1982 and 1985 Supp.) — $150,000 individual cap, $400,000 aggregate cap
4. Delaware Code, §4013 (1986) — $300,000 aggregate cap or to the extent of liability insurance
5. Florida Statutes Annotated, §768-28(5) (West 1986)— $100,000 individual cap, $200,000 aggregate cap
6. Idaho Code, §6-926 (1986 Cum. Supp. (Michie)) — $500,000 aggregate cap
7. Indiana Statutes Annotated, §34-4-165-4 (Michie 1986) — $300,000 individual cap, $500,000 aggregate cap
8. Kansas Statutes Annotated, §75-6105 (1984) — $500,000 aggregate cap
9. Kentucky Statutes Annotated, §44.070 (1986) — $100,000 individual cap, $250,000 aggregate cap
10. Maine Revised Statute Annotated, Title 14, §§8105 (Supp. 1986) — $300,000 aggregate cap
11. Massachusetts General Laws Annotated, Chapter 158, §2 (Cum. Supp. 1986) — $100,000 individual cap
12. Minnesota Statutes Annotated, §3.746, §466.04 (1986) — $200,000 individual cap, $600,000 aggregate cap
13. Mississippi Code 1972, §11-46-15 (1986 Cum. Supp.) — $500,000 aggregate cap or to the extent of liability insurance
14. Vernon's Missouri Statutes Annotated, §537.610 (Cum. Supp. 1987) — $100,000 individual cap, $800,000 aggregate cap

15. Montana Rev. Code, Sec. 2-9-105 (1985) — $300,000 individual cap, $1,000,000 aggregate cap
16. Revised Statues of Nebraska 1943, §23-2419.01 (1983 and Cum. Supp. 1986) — $1,000,000 individual cap, $5,000,000 aggregate cap
17. Nevada Revised Statutes Annotated, §41.035 (1985) — $50,000 individual cap
18. New Hampshire Revised Statutes Annotated 1955, §507-B:4 (1983 and Cum. Supp. 1986) — $150,000 individual cap, $500,000 aggregate cap
19. New Mexico Statutes Annotated 1978, §41-4-19 (1986) — $300,000 individual cap, $500,000 aggregate cap
20. General Statutes of North Carolina, §§143-291, 143-300.1, 160A-485 (Michie, 1983) — $100,000 individual cap or to the extent of liability insurance coverage
21. North Dakota Century Code, §32-12.1-03(2) (1985) — $250,000 individual cap, $500,000 aggregate cap
22. Oklahoma Statutes Annotated, Title 51, §154(A) (1985) — $100,000 individual cap, $1,000,000 aggregate cap
23. Oregon Revised Statutes, Title 3, Chapt. 30.270 (1985) — $100,000 individual cap, $300,000 aggregate cap
24. General Laws of Rhode Island, Title 9, Ch. 31, 9-31-3, (1985) — $100,000 individual cap
25. Code of Laws of South Carolina 1976, §15-78-120 (1986) — $250,000 individual cap, $500,000 aggregate cap
26. South Dakota Codified Laws, §21-32-16 (Cum. Supp. 1986) — recovery limited to amount of public liability insurance coverage purchased by and provided to governmental entity
27. Tennessee Code Annotated (Supp. 1986) — §29-20-403, $40,000 individual cap, $80,000 aggregate cap ($100,000/$300,000 in motor vehicle cases)

28. Vernon's Texas Code Annotated, Civil Practice and Remedies (1986) — §101.023, $250,000 individual cap, $500,000 aggregate cap
29. Utah Code Annotated 1953, §63-30-34 (1986) — $250,000 individual cap, $500,000 aggregate cap
30. Vermont Statutes Annotated 1985, Title 29, §§1403, 1404, recovery to extent of public liability insurance coverage
31. Code of Virginia, §18.01-195.1 *et seq.* (1983 Supp.) — $25,000 individual cap or to the extent of liability insurance coverage
32. West Virginia Statutes, §29-12A-7 (1985) — $500,000 individual cap
33. Wisconsin Statutes Annotated, §893.82 (1985) — $250,000 individual cap
34. Wyoming Statutes Annotated (Cum Supp. 1986) — §1-39-118, $250,000 individual cap, $500,000 aggregate cap